UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE				
UNITED STEEL WORKERS, DISTRICT 4, and LOCAL 4-406.))))			
and)			
ATLAS REFINERY, INC.,) Case: 22-CA-28403			

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TABLE OF AUTHORITIES

CASES

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Blaisdell Lumber Co., Inc. v. Horton, 242 N.J. Super. 98 (App. Div. 1990)20
Bridgeman v. National Basketball Ass'n., 675 F.Supp. 960 (D.N.J. 1987)27
Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Almeda County, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Kockos Bro., Inc. Wissinger Trucking Service, Inc. and Silas F. Royster, 183 NLRB No.137
<u>Clarke Manufacturing, Inc.</u> , 352 NLRB No.25, 144 (2008)23, 24, 25, 26
<u>Eastern States Optical, Co.</u> , 275 NLRB 371 (1985)17, 18, 19
General Electric Co. v. NLRB., 412 F.2d 512, 517 (2d Cir. 1969)
In re Victory Corrugated Container Corp. of New Jersey, 183 B.R. 373 (Bkrtcy.D.N.J., 1995)
Laborers Health and Welfare Trust Fund for Northern California v. Advanced Lightweight Concrete Co., Inc., 484 U.S. 539 (1988)26
McClatchy Newspaper, Inc., 321 NLRB 1386 (1996)27
NLRB v. Brotherhood of Teamster and Auto Truck Drivers Local No. 70, 459 F.2d 694 (9th Cir. 1972)15
NLRB v. International Ladies' Garment Workers' Union, AFL-CIO, 274 F.2d 376 (3d Cir. 1960)
NLRB v. Kentucky Utilities Co., 182 F.2d 810 (6 Cir. 1950)
National Labor Relations Bd. v. Cambria Clay Prod. Co., 215 F.2d. 48, 55 (6 th Cir. 1954)27
Sargent-Welch Scientific, Co., 208 NLRB 811 (1974)21
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OTHER:	
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Black's Law Dictionary (2001)	19
Robert A. Gorman, Basic Text on Labor Law Unionization and Collective Bargaining St. Paul, Minnesota (West Publishing Co.	
1979)	21